

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 19-cr-00064-RJD-1
:
:
- versus - : U.S. Courthouse
: Brooklyn, New York
JOHN DOE, :
Defendant : February 8, 2019
-----X

S E A L E D P R O C E E D I N G

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES SENIOR MAGISTRATE JUDGE

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1 THE CLERK: Criminal Cause for a Plea Hearing,
2 United States v. John Doe, case number 19-cr-64.

3 Counsel, please state your name for the record,
4 beginning with the government.

5 MR. BINI: Mark Bini for the United States and
6 I am joined by trial attorneys Derek Ettinger and
7 Jonathan Robell from the Department of Justice.

8 THE COURT: Thank you.

9 MR. BINI: Good morning, your Honor or good
10 afternoon.

11 THE COURT: Good afternoon.

12 MR. SCHAFFER: Good afternoon.

13 I'm Kent Schaffer. I represent Mr. Berkowitz,
14 along with James Kennedy.

15 MR. KENNEDY: Good afternoon, your Honor.

16 MR. SCHAFFER: For Mr. Doe.

17 THE COURT: Why don't you all have a seat?

18 Let's deal with some preliminary matters. I
19 have an application from the United States by letter of
20 February 7th and I take it counsel for the defendant has
21 seen that letter?

22 MR. SCHAFFER: That's correct, your Honor.

23 THE COURT: And in that letter, I am given
24 reason to substitute John Doe for the defendant's name on
25 the docket sheet and on all filings that are not made

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1 under seal. Excuse me. On any matters that are not
2 filed under seal. I don't think it's a John Doe docket,
3 right, or is it?

4 MR. BINI: Your Honor, it was the only publicly
5 filed document that appears is John Doe.

6 THE COURT: Okay. Thank you. You folks don't
7 have to rise unless it's too many years of habit make you
8 do it.

9 First of all, I think there's no objection to
10 that application, is that correct?

11 MR. SCHAFFER: That's correct, Judge.

12 THE COURT: And I think that it's adequately
13 supported by the law enforcement interests articulated in
14 the government's application and so I will grant it.

15 The application also asks me to refer to the
16 defendant during these proceeding as John Doe, rather
17 than by his name, if there are individuals in the
18 courtroom other than those involved in the proceeding
19 we're about to undertake.

20 From what I can see, there aren't but I will
21 hear from the government.

22 MR. BINI: The government agrees, your Honor.

23 THE COURT: Okay, great. So in that case, let
24 me understand that the defendant is Rodrigo Garcia
25 Berkowitz and is that the gentleman who is in court

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1 between his attorneys?

2 MR. SCHAFFER: Yes, your Honor.

3 MR. KENNEDY: Yes.

4 THE COURT: Does your client speak and
5 understand English?

6 MR. SCHAFFER: Yes, he does, your Honor.

7 THE COURT: You do, Mr. Berkowitz?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: All right. I've got a lot of paper
10 up here, so please bear with me for just a minute.

11 As I understand it, this is Mr. Berkowitz's
12 first appearance before the Court in connection with this
13 case, is that right?

14 MR. BINI: Yes, your Honor.

15 THE COURT: Whenever that's so, there are
16 certain rights I advise a defendant of and so I am going
17 to do that today.

18 Mr. Berkowitz, I understand that you
19 voluntarily presented yourself in court this morning and
20 were not placed under arrest in any physical way but as a
21 legal matter, you are in essence under arrest right now
22 and that you're really not free to leave without a court
23 order permitting you to do so.

24 Because you're under arrest, you have a number
25 of rights. Those rights include the right to remain

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1 silent. You don't have to make any statements about
2 anything. You don't have to answer any questions and if
3 you were to exercise that right to remain silent, no one
4 could argue to a court or a jury that your silence is
5 evidence of guilt.

6 On the other hand, if you make any statements
7 to anyone other than your lawyers, the prosecution can
8 find out what you've said and attempt to use it as
9 evidence against you in their prosecution of this case.

10 Is that clear to you?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You have the right to be defended
13 by attorneys throughout the case. If you could
14 demonstrate to my satisfaction that you could not afford
15 to retain private attorneys, I would appoint an
16 experienced criminal defense lawyer to defend you at no
17 cost to you.

18 By appearing here with Mr. Schaffer and Mr.
19 Kennedy, you've indicated that you seek to have private
20 counsel appear on your behalf and that you're not
21 applying for court-appointed counsel.

22 Is that accurate?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Mr. Schaffer, have you and Mr.
25 Kennedy filed notices of appearance in the matter?

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1 MR. SCHAFFER: Yes, sir, we have.

2 THE COURT: You are entitled to know what the
3 charge is against you. The charges set forth in a felony
4 information that the prosecutor will seek leave to file
5 as we go forward with this proceeding and since I will be
6 describing the charges in greater detail as part of the
7 proceeding, I will await a further description of them
8 now.

9 Let me ask you though, have you seen the felony
10 information that the prosecutor wishes to file and
11 reviewed it carefully with your attorneys?

12 THE DEFENDANT: Yes, your Honor, I did.

13 THE COURT: Do you understand what it is
14 accusing you of having done?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Then let's move
17 forward.

18 The reason that you're present today is not
19 only to learn the rights that you're entitled to as a
20 criminal defendant generally, but more specifically,
21 because your attorneys have indicated that you wish to
22 enter a plea of guilty in satisfaction of the charges
23 that might be brought against you, pursuant to a written
24 agreement that you've made with the prosecution, right?
25 And that's what we're about to embark upon is the

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1 proceeding pursuant to which you'll be offered the
2 opportunity to do that.

3 Are you understanding everything I am saying?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: All right. Before I may proceed to
6 hear any guilty plea that you might choose to offer, Mr.
7 Berkowitz, I need to make sure that you understand that I
8 am not the judge who is presiding over your case. Your
9 case will be presided over by a United States District
10 Judge, Judge Dearie. Judge Dearie is the one who will
11 decide whether any plea of guilty you offer today should
12 be formally accepted and Judge Dearie is the one who will
13 determine what your sentence should be.

14 I'm a magistrate judge, a different level of
15 judge than Judge Dearie is. He's a district judge. As a
16 magistrate judge, I do not have the authority under the
17 law to formally accept the plea of guilty or to decide
18 your sentence.

19 I do, however, have the right, if I have your
20 consent and agreement, to be the judge who listens to
21 your guilty plea. Now if you were to proceed before
22 Judge Dearie, which is your absolute right, you would be
23 permitted to plead guilty on the same terms and
24 conditions being offered to you today on a different day
25 that's more convenient for Judge Dearie.

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1 In the alternative, if you agree to allow me to
2 be the judge who listens to your guilty plea, then I will
3 arrange for everything we say to each other to be
4 recorded, and for the recording to be transcribed or
5 written out and that way, Judge Dearie will have a
6 written record of everything you and I have said to each
7 other before he's called upon to decide whether to accept
8 your plea or how to determine your sentence.

9 Do you understand everything I have said?

10 THE DEFENDANT: Yes, I did, your Honor.

11 THE COURT: Do you wish to surrender your right
12 to have Judge Dearie hear your plea and do you agree to
13 present your plea to me instead?

14 THE DEFENDANT: Yes, I do agree, your Honor.

15 THE COURT: Did you review this consent form
16 carefully with your attorneys and then proceed to sign
17 it?

18 THE DEFENDANT: Yes, your Honor, I did.

19 THE COURT: Did you understand what you were
20 signing?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Has anybody forced you or pressured
23 you or threatened you to agree to have me hear your plea
24 instead of Judge Dearie?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Counsel, do you know of any reason
2 why your client should not consent to proceed before me
3 for these limited purposes?

4 MR. SCHAFFER: I do not, your Honor.

5 THE COURT: I find the consent of the defendant
6 knowing and voluntary. I am adding my signature and
7 today's date, February 8th, to the consent portion of the
8 referral order form to reflect the finding I have just
9 made.

10 Mr. Berkowitz, before I may recommend to Judge
11 Dearie that his Honor accept any plea of guilty you may
12 offer, I have to ask you a very long list of questions.
13 The questions are important. They're designed to make
14 sure you understand what a serious decision it is you're
15 about to make and what the consequences of that decision
16 are.

17 Frankly, the questions are also designed to
18 protect the prosecution and the Court because my
19 questions and your answers to them will create a record
20 that will demonstrate that I have explained your rights
21 to you. You agreed that you understood those rights and
22 then you agreed to surrender or waive those rights.

23 And once that happens, any plea of guilty you
24 make will be legally valid and permanently binding on
25 you. And so, I think it's important that you listen

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1 carefully to the questions. If I ask you anything and
2 you're not sure you understand it, all you have to do is
3 tell me so and I will try to rephrase the question and
4 make it clearer.

5 If you want to stop at any point so that you
6 may have a private conversation with your attorneys or so
7 that you have the opportunity to ask me a question before
8 you answer mine, you may do so. Just tell me that that's
9 what you want to do.

10 THE DEFENDANT: Okay.

11 THE COURT: Are we clear with each other so
12 far?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: It's also very important that you
15 be completely truthful during this proceeding and to
16 encourage you in that regard, I am going to direct that
17 you be placed under oath before we proceed any further.
18 I want you to stand and raise your right hand.

19 R O D R I G O G A R C I A B E R K O W I T Z ,

20 called as a witness, having been first duly sworn,
21 was examined am urging you now to listen carefully to
22 and testified as follows:

23 THE COURT: Now that you've taken this oath,
24 when you answer my questions, you do so under the
25 penalties of perjury or making a false statement. Put

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1 simply, that means that if you lie to me during this
2 proceeding, the prosecutors may bring new criminal
3 charges against you just for that.

4 Are we clear?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Tell me your full name.

7 THE DEFENDANT: Rodrigo Garcia Berkowitz.

8 THE COURT: How old are you?

9 THE DEFENDANT: I'm 39-years-old.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: I have a bachelor in production
12 engineering.

13 THE COURT: Is English your native language?

14 THE DEFENDANT: No, Portugese.

15 THE COURT: Are you having any difficulty
16 understanding me as we communicate in English alone?

17 THE DEFENDANT: No.

18 THE COURT: Would you be better assisted if we
19 had a Portugese interpreter here?

20 THE DEFENDANT: No, I am fine with English,
21 your Honor.

22 THE COURT: Counsel, have you had any
23 difficulty communicating with your client in the English
24 language?

25 MR. SCHAFFER: Not at all, your Honor.

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1 THE COURT: Mr. Berkowitz, are you now or have
2 you in recent months been under the care of a doctor,
3 psychologist or other healthcare professional for any
4 mental, emotional or physical problems?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: In the last 24 hours, have you
7 taken any narcotics, drugs, medicine, pills or alcohol?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Have you ever in your life been
10 hospitalized or treated for drug or alcohol abuse or
11 mental or emotional problems?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Is your mind clear today?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you feel healthy, focused and
16 alert?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand everything that I
19 have said to you so far?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: We have already made mention of the
22 felony information that the prosecutor is seeking leave
23 to file in this case. I would like to turn your
24 attention to that document now, assuming I can find my
25 copy of it.

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1 Have you had a chance to see the information
2 that the prosecutor wishes to file and review it with
3 your attorneys? I know I've already asked you that but
4 that question goes here too.

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: In that information, you are
7 charged with the prosecutor is referring to in shorthand
8 as a conspiracy to commit money laundering. More
9 specifically, you're charged with participating in a
10 bribery scheme involving Brazilian government officials
11 and the opportunity to make purchases of oil and food
12 stuffs or -- right?

13 MR. BINI: Feedstocks.

14 MR. SCHAFFER: Feedstocks.

15 MR. BINI: I'm sorry, which is a type of oil.

16 THE COURT: I did not appreciate that
17 particular --

18 MR. BINI: Sorry.

19 THE COURT: -- until you just made it clear.

20 MR. BINI: Yes, your Honor.

21 THE COURT: Let me start again then. You are
22 charged with participating in an agreement that involved
23 the bribery of public officials from Brazil and company
24 officials involved in the oil industry that had to do
25 with securing contracts for oil and feedstock. And

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1 you're charged with participating in money laundering
2 with respect to that or a conspiracy involving money
3 laundering with respect to that between 2010 and 2018.
4 And by a conspiracy to commit money laundering with
5 respect to it, I think what I am referring to even more
6 specifically is an agreement to work together with other
7 people to transfer and hide the source and ownership of
8 profits generated by the bribery scheme.

9 Do you understand what you're accused of in the
10 felony information that the prosecution wishes to file?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Because this -- when I say this is
13 a felony charge, what I mean is that the maximum penalty
14 for being found guilty of it is a period of incarceration
15 that exceeds a year. That's what defines a felony under
16 the federal criminal law.

17 Because it is a felony charge, you have a right
18 under the United States Constitution to have the charge
19 brought only by means of an indictment returned by a
20 properly constituted and charged grand jury.

21 This is not an indictment and it has not been
22 returned by a grand jury. This is a piece of paper or
23 several pieces of paper signed by a federal prosecutor
24 without any grand jury proceedings having been held at
25 all.

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1 If you do not waive your right to a grand jury
2 indictment, you cannot under the United States
3 Constitution be charged with a felony like the money
4 laundering conspiracy we just discussed unless and until
5 a grand jury finds by returning an indictment, that they
6 conclude that there is probable cause to believe that you
7 committed this crime.

8 If you do not waive your right to grand jury
9 indictment, the prosecutor may go before the grand jury
10 and present evidence against you and ask the grand jury
11 to return such an indictment.

12 The grand jury would have at least 16 and no
13 more than 23 members and at least 12 of the 16 to 23
14 grand jurors would be required to find that there was
15 probable cause to believe that you committed this offense
16 before you could be indicted for it. The grand jury
17 might indict you. The grand jury might not indict you.

18 But if you waive your right to grand jury
19 indictment, you allow the prosecutor to bring the charge
20 against you just with papers prepared in a prosecutor's
21 office without any grand jury proceedings and the case
22 will proceed against you if you waive your right, just as
23 though you had been indicted even though you never were.

24 Do you understand everything I have just told
25 you?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Have you discussed with your
3 attorneys very carefully whether you should waive your
4 right to grand jury indictment?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Is it your preference or your
7 choice to waive your right to grand jury indictment?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did you review this waiver form
10 carefully with your counsel and then agree to sign it?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Did anybody pressure you or
13 threaten you or force you to waive grand jury indictment
14 in any way?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Counsel, do you know of any reason
17 why your client should not waive his right to a grand
18 jury indictment?

19 MR. SCHAFFER: No, sir, I do not.

20 THE COURT: I find the defendant's waiver of
21 indictment knowing and voluntary and I am adding my
22 signature and printed name and title to any waiver form
23 to reflect that finding.

24 The waiver form appears to be dated February
25 18th. Today is February 8th. I'm also correcting that.

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1 MR. BINI: Thank you, your Honor.

2 Counsel, have you reviewed the matter of
3 pleading guilty carefully with your client?

4 MR. SCHAFFER: Yes, sir, I have.

5 THE COURT: Does he understand the rights he
6 will be waiving if he enters a guilty plea?

7 MR. SCHAFFER: He does, your Honor.

8 THE COURT: Is he capable of understanding the
9 nature of this proceeding?

10 MR. SCHAFFER: Yes, sir, he is.

11 THE COURT: Do you have any doubt about his
12 competence to plead guilty at this time?

13 MR. SCHAFFER: No, sir, I do not.

14 THE COURT: Have you alerted your client to,
15 one, the maximum sentence and fine that might be imposed.
16 two, the operation of the sentencing guidelines as best
17 you can predict it, particularly given the terms of his
18 agreement with the prosecution and three, the collateral
19 consequences of conviction including, but not limited to
20 forfeiture and restitution and removal.

21 MR. SCHAFFER: Yes, I have, your Honor, as to
22 the whole three.

23 THE COURT: Thank you.

24 Mr. Berkowitz, have you had enough time to go
25 over your case very carefully with your lawyers?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Are you satisfied to Mr. Schaffer
3 and Mr. Kennedy defending you in this prosecution?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: We have been over the information.
6 Do you have the charge against you in that document clear
7 in your mind?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: You have a right to plead not
10 guilty to that charge. You still have that right as you
11 sit here today. Moreover, you have that right whether
12 you are guilty or not. Pleading not guilty is never
13 lying or misleading the Court. Every defendant charged
14 has the right to plead not guilty whether he committed
15 the crime in the charging document or not. It's the way
16 a defendant exercises his constitutional right to a
17 trial.

18 Are we clear so far?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: If you were to plead not guilty or
21 persist in any previously entered plea of not guilty -- I
22 don't think that's happened here -- if you were to plead
23 not guilty, then under the Constitution and laws of the
24 United States, you would be entitled to a speedy and
25 public trial by a jury with the assistance of your

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1 attorneys, not only at the trial but at all stages of the
2 case brought against you, with respect not only to the
3 charges in the information but any additional charges the
4 prosecution might bring.

5 Is that clear to you?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: At your trial, you would be
8 presumed to be innocent. The prosecution would be
9 required to overcome the presumption of innocence and to
10 prove that you were guilty by competent evidence and
11 beyond a reasonable doubt. You would have no obligation
12 to prove that you were innocent.

13 If the prosecution failed to establish your
14 guilt beyond a reasonable doubt, the members of the jury
15 would have the duty acquit you, find you not guilty, and
16 Judge Dearie would them so.

17 Is that clear?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: That's why sometimes when jurors
20 find a defendant not guilty, it doesn't necessarily mean
21 that the jurors believe that the defendant is innocent.
22 When a jury returns a verdict of not guilty, it only
23 means that the jurors are not convinced beyond a
24 reasonable doubt of the defendant's guilt.

25 I am seeing someone who might be wishing to

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1 enter the courtroom but I suppose not.

2 So when a jury returns a not guilty verdict,
3 they're not saying the defendant is innocent necessarily,
4 they're only saying they're not convinced beyond a
5 reasonable doubt of his guilt.

6 Do you understand that difference?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: If you decided to proceed to a
9 trial, the prosecutor's witnesses would be required to
10 come into the courtroom during the trial and to present
11 their testimony against you right in front of you and
12 your attorneys.

13 Your lawyers would have the right to question
14 the prosecution witnesses on cross-examination. Your
15 lawyers would have the right to object to evidence the
16 prosecution attempted to offer against you and you and
17 your lawyers working together would have the right to
18 call witnesses to testify, and present other types of
19 evidence, whether it's documents, photographs or
20 recordings on your behalf and in your defense during the
21 course of the trial.

22 You could even issue subpoenas, which are like
23 court orders requiring people to come to court and
24 testify if there were witnesses you wished to call in
25 your defense.

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1 Do you understand what I have just said?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: At your trial, you yourself would
4 have the right to testify as a witness in your own
5 defense if you made the choice to do so. On the other
6 hand, no one could require you to testify at your trial
7 if you preferred not to do so. That's because the
8 Constitution of the United States provides that no one
9 may be compelled to say anything self-incriminating. If
10 you made the decision that you did not want to be a
11 witness in your own defense at your trial, Judge Dearie
12 would instruct the members of the jury that they could
13 not take your decision not to testify or your silence
14 into account when they decided what their verdict should
15 be.

16 In other words, the decision to remain silent
17 and the decision not to testify at trial, cannot be held
18 against the defendant by a jury and the judge will
19 instruct the jury in your case of those legal principles.

20 Is that clear to you?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: On the other hand, if you offer a
23 plea of guilty and Judge Dearie accepts it, you will be
24 surrendering your constitutional right to trial, as well
25 as all the other rights I have been describing to you

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1 today. There will be no further trial of any kind in
2 your case and you will have no right to appeal from the
3 conviction or guilty judgment that will be entered
4 against you.

5 Judge Dearie will essentially find you guilty
6 and convict you based upon what you say in my courtroom
7 today and that will free the prosecutor of any
8 responsibility to prove what you did.

9 Is that clear to you?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If you went to trial and you were
12 found guilty by the verdict of a jury, you would have the
13 right to take an appeal and ask a higher court, called
14 the Court of Appeals, to review the legality of all of
15 the proceedings that led up to your conviction.

16 But when you plead guilty, your conviction is
17 based upon the words that you decided to say and under
18 that circumstance, there is no right to appeal from the
19 conviction that follows.

20 Do you follow that?

21 THE DEFENDANT: Yes, I did, your Honor.

22 THE COURT: If you wish to enter a plea of
23 guilty, I am going to ask you questions about what you
24 did in violation of the money laundering statute. I'm
25 going to ask those questions so that Judge Dearie and I

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1 can be satisfied that your plea of guilty is based on
2 events that really took place.

3 You don't have to answer those questions unless
4 you want to go forward with your guilty plea. If you do
5 answer the questions and you admit your involvement in
6 criminal activity, you'll be surrendering your
7 constitutional right not to say anything that is self-
8 incriminating.

9 Have I made myself clear?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you still want to give up your
12 right to trial and all the other rights I've been telling
13 you about today?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: I've been told that you're making
16 this decision pursuant to the terms of a written
17 agreement you have entered into with the prosecution.
18 That agreement which is 12 pages long and bears today's
19 date appears to have signatures on the last page and has
20 been marked as Government Exhibit 1.

21 I am going to ask my clerk to hand your lawyer
22 that exhibit, so you can look at it with me.

23 Mr. Berkowitz, the original Court Exhibit 1 is
24 now before you. Do you recognize this document?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Turning your attention to the final
2 page, does your signature appear above the typewritten
3 line with your name?

4 THE DEFENDANT: Yes,

5 THE COURT: Before you signed it, did you read
6 it?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you go over it with your
9 attorney carefully?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Did you understand what you signed?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you have any questions about
14 your agreement that you would like to ask me or discuss
15 privately with your attorneys before we go forward?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Is everything in it clear?

18 THE DEFENDANT: Yes.

19 THE COURT: Does that written agreement contain
20 a complete and accurate statement of everything you and
21 the prosecution have agreed to concerning this case?

22 THE DEFENDANT: Sorry, your Honor, can you
23 repeat please?

24 THE COURT: I certainly can. Does the written
25 agreement that's in front of you and marked as Government

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1 Exhibit 1 --

2 THE DEFENDANT: Uh-hum.

3 THE COURT: -- does that document set out in
4 writing completely and accurately, everything that you
5 and the prosecution have agreed to about how your case
6 will proceed?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Has anyone promised you anything in
9 return for pleading guilty that isn't written down in
10 that agreement?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: You may return the document to the
13 Court, please, counsel.

14 I need to go review with you at this stage, the
15 penalties you face if you decide to go forward with your
16 guilty plea.

17 Do you have the charge against you, the money
18 laundering conspiracy clear in your mind?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: The law you are accused of
21 breaking, that money laundering conspiracy, authorizes
22 Judge Dearie to impose a prison sentence of as long as 20
23 years.

24 Is that clear to you?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: It also authorizes Judge Dearie to
2 impose a term of supervised release as long as three
3 years.

4 Is that clear to you?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Supervised release is a period of
7 time, in your case it could be up to three years, it's a
8 period of time that doesn't even begin until you've
9 finished serving whatever prison sentence is imposed in
10 your case.

11 Once you've finished serving that prison
12 sentence, you will be released from prison but you
13 wouldn't be completely free because you'll be subject to
14 the rules and regulations of supervised release.

15 A defendant permitted to remain in the United
16 States has to follow a long list of rules while on
17 supervised release. Those rules include but are not
18 limited to reporting requirements, requirements that the
19 defendant answer his probation officer's questions and
20 follow his probation officer's instructions carefully.

21 And whether a defendant remains in the United
22 States or not, it is a condition of supervised release
23 that the defendant commit no new crimes whatsoever.

24 Are you following me so far?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: If you were to violate the terms of
2 your supervised release, whether in doing so you've
3 committed a new crime or not, you could be arrested,
4 brought back to this Court, and sentenced to a new prison
5 term of up to two years on the money laundering
6 conspiracy charge for violating the conditions of your
7 supervised release. You would get no credit against the
8 new two-year sentence for the time you spent serving your
9 original prison sentence or the time you spent with your
10 freedoms limited by the rules of supervised release.

11 Are you still following me?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You could be fined the greater of
14 \$500,000 or twice the value of the funds involved in the
15 money laundering transactions that are described in the
16 felony information.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: You will be required to make
20 restitution or pay back the proceeds of criminal activity
21 as determined by the Court. That will be separate and
22 apart from any fine.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: You will be required to make a

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1 criminal forfeiture or surrender funds of \$2.3 million
2 and cooperate with the United States and its government
3 and the prosecution in its effort to find and cease those
4 monies.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: You are subject to deportation or
8 removal from the United States based upon your guilty
9 plea in this matter. And anything you say in my
10 courtroom today can be used against you if there were
11 ever proceedings held to determine your right to remain
12 in or ever return to the United States.

13 Is that clear to you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You, like every other defendant
16 convicted of a federal felony, will be required to make a
17 \$100 special assessment payment at or about the time
18 you're sentenced in this case.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: I think then it's time to discuss
22 what we call the Sentencing Commission Guidelines. Have
23 you had a chance to talk to your lawyers about these
24 guidelines and your agreement and how the guidelines in
25 the agreement interact and how they're likely to affect

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1 the sentence you may receive from Judge Dearie?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Has the government reached an
4 estimate of the guideline range that they expect Judge
5 Dearie will calculate in this case?

6 MR. BINI: Yes, your Honor. The government
7 estimates that the guidelines will be a base level of 8
8 under 2(s)(1.2), plus 20 for more than 9.5 million in
9 laundered funds -- that's 2(s)(1.2) and
10 2(b)(1.1)(B)(1)(k). A two point enhancement under
11 2(s)(1.1)(B)(2)(b) for --

12 THE COURT: For -- I'm sorry.

13 MR. BINI: Oh, is that a four point
14 enhancement?

15 THE COURT: No, no, no, I meant f-o-r, I
16 thought you were moving onto your next point without
17 explaining what that last two point enhancement was.

18 MR. BINI: Oh, I'm sorry, your Honor.

19 THE COURT: My fault.

20 MR. BINI: And that enhancement is for a
21 conviction under 18 USC 1956.

22 Also, the government believes a two point
23 enhancement under 2(s)(1.1)(B)(3) for sophisticated money
24 laundering would be assessed here, giving a total offense
25 level of 32, which not taking into account acceptance of

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1 responsibility, would call for a sentencing range of 121
2 to 151 months.

3 THE COURT: Did you hear and understand what
4 the -- I doubt you fully understood all of the technical
5 references to the sentencing guidelines but did you hear
6 and understand that the prosecutor, based upon his
7 application of these very technical guidelines to the
8 facts and circumstances of your case, estimates that
9 Judge Dearie will calculate a guideline range of 121
10 to --

11 MR. BINI: 151 months before the acceptance of
12 responsibility.

13 THE COURT: Do you understand that that's the
14 government's estimate?

15 THE DEFENDANT: Yes, I understand, your Honor.

16 THE COURT: Now the final decision while I am
17 sure the government's estimate was made carefully, the
18 final decision about your guideline range will be made by
19 Judge Dearie and Judge Dearie won't calculate your
20 guideline range until he receives something called a
21 presentence report. The report hasn't been written yet
22 but when it has been, you and you're your lawyers and the
23 prosecutor will all be permitted to read the report.

24 There will then be a hearing before Judge
25 Dearie at which you will have the opportunity to speak

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1 and your lawyers will have the opportunity to speak on
2 your behalf. At that time, if there's anything in the
3 report that you think is inaccurate or unfair, you or
4 your lawyers can tell Judge Dearie about it.

5 And only after hearing from you and the
6 prosecutors will Judge Dearie decide what the guideline
7 range in your case should be. It is possible that Judge
8 Dearie will calculate an even longer guideline range than
9 the prosecutor has estimated.

10 Do you understand me?

11 THE DEFENDANT: Yeah, I understand, your Honor.

12 THE COURT: Even after the judge calculates the
13 guidelines, his Honor is not required to impose a
14 sentence within the guideline range he calculates. The
15 guidelines are what we call advisory. They will suggest
16 to the judge what an appropriate sentence should be but
17 the judge will look at an even fuller range of fact and
18 circumstances about you and your criminal conduct, than
19 the guidelines take into account and he will have the
20 authority to impose a sentence longer or shorter than the
21 guideline range he calculates.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Your agreement with the prosecution
25 suggests the possibility that the prosecutors will ask

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1 the Court to impose a sentence below the guideline range
2 but it doesn't guarantee you that the prosecutors will
3 make that request of Judge Dearie. Whether they do so or
4 not, depends upon things that haven't even happened yet.

5 Do you understand?

6 THE DEFENDANT: Yes, I understand, your Honor.

7 THE COURT: Even if the prosecutors make the
8 request of Judge Dearie, Judge Dearie is not obligated to
9 grant their request. So even, in other words, if you
10 satisfy the prosecutors that you're entitled to a
11 downward departure, Judge Dearie will have to be
12 independently persuaded before you're granted one.

13 Do you understand that?

14 THE DEFENDANT: I understand, your Honor.

15 THE COURT: Pursuant to the terms of your
16 agreement, if you receive a term of imprisonment of 121
17 months or less, no matter how Judge Dearie calculates
18 that prison sentence, you will have no right to challenge
19 any aspect of your conviction or sentence or plea.

20 Even if you are sentenced to incarceration for
21 longer than 121 months, you will not be permitted to
22 withdraw your guilty plea or challenge the judgment of
23 guilt that was entered against you as a result of it on
24 that basis.

25 The only right you would have if you're

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1 sentenced to prison for more than ten years and a month,
2 would be to challenge the length of your prison term.

3 Do you understand me?

4 THE DEFENDANT: Yes, I understand, your Honor.

5 THE COURT: Have I gotten all the penalties and
6 guidelines out on the table in a way that the prosecution
7 thinks is accurate?

8 MR. BINI: Yes, your Honor.

9 THE COURT: You may have heard of parole.
10 Parole is a program of early release from prison
11 sentence. Parole is a state court program. It is, and
12 hasn't been, for many years, a federal court possibility.
13 So whatever prison term you receive from Judge Dearie,
14 you will not be released early from it on parole.

15 Is that clear to you?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you have any questions you would
18 like to ask me or discuss privately with your attorneys
19 about the rights you have and are being asked to waive,
20 the charge against you, the terms of your agreement, the
21 penalties confronting you or anything else?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Is everything I have told you today
24 clear to you?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Are you ready to enter a plea of
2 guilty to the information?

3 THE DEFENDANT: Yes, I am, your Honor.

4 THE COURT: Counsel, do you know of any reason
5 why your client should not enter the plea of guilty to
6 the information contemplated by your client's agreement
7 with the government?

8 MR. SCHAFFER: No, I do not, your Honor.

9 THE COURT: Mr. Berkowitz, with respect to the
10 charge of conspiracy to commit money laundering as
11 further detailed in felony information 19-cr-64, how do
12 you plead; guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: Do you make this plea of guilty
15 voluntarily and of your own free will?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Have you been threatened or forced
18 by anyone to enter a guilty plea?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Other than what's written down in
21 your plea agreement with the government, has anyone
22 promised you anything in return for pleading guilty?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Other than to describe to you the
25 range of sentences permitted under law, has anyone told

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1 you or promised you what sentence Judge Dearie will
2 impose in your case?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Tell me what happened and what you
5 did that makes you guilty. And before you do, I can't
6 help noticing that you are about to read from a prepared
7 statement, which is perfectly fine, provided I give you
8 my little remark about it.

9 I am imagining or speculating, I should say,
10 that your attorneys helped prepare the statement you're
11 about to read. That's perfectly appropriate. Part of a
12 lawyer's responsibility in circumstances like these is to
13 help a defendant find the right word with which to
14 express himself.

15 But the responsibility for the truthfulness and
16 the accuracy of what you're about to say is yours, not
17 your lawyers, and the fact that they help you what you're
18 about to read to the Court, doesn't give you an excuse to
19 blame them if it isn't truthful. What you tell me must
20 be the truth as you recall it, not simply what you were
21 told to say by an attorney.

22 Do you understand what I have said?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Now you can tell me either in your
25 own words or in words your lawyer helped you find, what

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1 you did that makes you guilty of this crime.

2 THE DEFENDANT: In or about and between 2010
3 and 2018, employees and agents of certain companies
4 involved in the international trading of fuel oil and
5 other commodities --

6 THE COURT: In the -- I'm sorry, in the
7 international trading of?

8 THE DEFENDANT: Fuel oil.

9 THE COURT: Fuel oil. I'm sorry.

10 THE DEFENDANT: Fuel oil and other commodities,
11 corruptly offered and paid bribes to foreign officials,
12 including myself in order to obtain and retain business
13 with Petrobras, the Brazilian state-owned oil company in
14 which I worked and had worked for years.

15 In order to promote and conceal the proceeds of
16 the bribery screen -- scheme, myself and my co-
17 conspirators established shell companies and shell bank
18 accounts around the world, including Switzerland and
19 Uruguay.

20 During this time period, myself and my co-
21 conspirators knowingly -- knowingly and internationally
22 (sic) conspired to transfer these proceeds from a place
23 inside of the United States, ultimately to a place
24 outside of United States.

25 This was sometimes done via wire transfer,

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1 through United States banks, and in United States dollars
2 to a bank account that my father set up for my benefit
3 with my authorization in Uruguay.

4 I knew that the proceeds I was receiving were
5 from the unlawful activity of bribery. Further, the
6 creating of shell companies and shell bank accounts was
7 done to conceal and disguise the funds.

8 THE COURT: You said -- I think you misspoke
9 one word while you were speaking.

10 THE DEFENDANT: Maybe.

11 THE COURT: When you said that you knowingly
12 and internationally conspired --

13 THE DEFENDANT: Intentionally, sorry.

14 THE COURT: Do you --

15 THE DEFENDANT: My mistake.

16 THE COURT: Do you know what the word
17 intentionally means?

18 THE DEFENDANT: Yes, I know what intentionally
19 is. Yes.

20 THE COURT: And did you intend to say
21 intentionally --

22 THE DEFENDANT: Yes.

23 THE COURT: -- instead of internationally?

24 THE DEFENDANT: Exactly.

25 THE COURT: All right. Let me go over this

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1 with you just a little bit.

2 THE DEFENDANT: Okay.

3 THE COURT: You were an official of the
4 government of Brazil and had responsibilities in
5 connection with Petrobras, a Brazilian government-run oil
6 company.

7 Is that correct?

8 THE DEFENDANT: That's correct.

9 THE COURT: And during the time you held that
10 capacity you and others working for Petrobras that you
11 knew about, took bribes from private companies that
12 wanted to get favorable terms on oil contracts with
13 Petrobras.

14 Is that accurate?

15 THE DEFENDANT: That's accurate.

16 THE COURT: And then you tried to hide the
17 bribe money by placing it in offshore accounts so that it
18 wouldn't be readily traced to you.

19 Is that correct?

20 THE DEFENDANT: That is correct, your Honor.

21 THE COURT: You did this between 2010 and 2018?

22 THE DEFENDANT: Yes, that's correct.

23 THE COURT: And you did it together with other
24 people who were accepting bribes who also worked at
25 Petrobras and had official capacities in the Brazilian

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1 government and in the oil business.

2 THE DEFENDANT: Yes, that's correct.

3 THE COURT: You knew all of this was going on
4 and why the monies were being put in these offshore
5 accounts was to hide its true source and ownership?

6 THE DEFENDANT: Yes, your Honor, I knew that.

7 THE COURT: What would the government's proof
8 of venue be?

9 MR. BINI: Your Honor, if this case were to
10 proceed to trial, the government would prove that the
11 bribe payments moved through United States accounts and
12 through United States corresponding accounts, including
13 several accounts in New York City, passing through the
14 Eastern District of New York.

15 And the government would also note that the
16 defendant has agreed to waive venue as part of his
17 agreement with the government and plead guilty here in
18 the Eastern District of New York in the first paragraph
19 of his agreement.

20 THE COURT: Mr. Schaffer, are those
21 representations consistent with your understanding?

22 MR. SCHAFFER: Yes, your Honor.

23 THE COURT: Thank you. Have I left anything
24 out of the allocution that the government can think of?

25 MR. BINI: No, your Honor. The only other

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1 thing I would say is it's -- I think, you know, certainly
2 implied in the colloquy that you had was that not only
3 were the transactions done to conceal the bribe payments
4 but also to promote and further the bribery scheme.

5 THE COURT: And how exactly would that be?

6 MR. BINI: So in other words, in their -- under
7 the money laundering information charges him both with
8 concealment money laundering but promotional money
9 laundering in that the funds were moved into these
10 accounts, such as the Uruguayan account for the
11 defendant, in order to continue the bribery and to
12 continue the scheme, so that they would award the
13 Petrobras business as part of the scheme.

14 THE COURT: I'm still not sure I am
15 understanding the theory under which the concealment of
16 the proceeds is in furtherance of the ongoing nature of
17 the scheme, except insofar as it prevented discovery of
18 the scheme, so that its perpetrators could continue it.
19 Is that what you're trying to say or something different?

20 MR. BINI: Well, no, I'm saying it does promote
21 the scheme because with -- under 1956(a)(2)(A), and the -
22 - or 1956, the international money laundering statute,
23 there is no --

24 THE COURT: Someone is coming in.

25 MR. BINI: -- Santos issue. So the payment, a

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1 bribe payment that moved would also count as promotional
2 money laundering is what I am trying to say.

3 That said -- now that I've said it, your Honor,
4 I withdraw it because I think the statements make that
5 out and I'm making a legal distinction.

6 THE COURT: All right. That's fine. One thing
7 I did want to ask you and I will take your representation
8 and I infer it from the information, it's just not
9 something I knew before, under the Foreign Corrupt
10 Practices Act predicates --

11 MR. BINI: Yes, your Honor.

12 THE COURT: -- what connection -- I understand
13 that it can be a bribery of a foreign official, but are
14 you representing that the companies that paid the bribes
15 were based in the United States and that's why it's
16 covered by the FCPA?

17 MR. BINI: Some of them are based in the United
18 States or had subsidiaries in the United States but in
19 addition to, the defendant himself was present in the
20 United States for much of the scheme and was based --

21 THE COURT: And that's where I get my question
22 from. So a foreign company paying a foreign government
23 official who is in the United States at the time he
24 receives the payment, satisfies the elements of the
25 Foreign Corrupt Practices Act, even though there's no

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1 United States person or entity involved in the corrupt
2 arrangement.

3 MR. BINI: Well here there but it would under
4 both DD2 in this case, 15 USC 78 DD2 and 15 USC 78 DD3
5 and I am going to turn to my colleague (indiscernible)
6 that section but the one relates to actually being
7 present in the United States and that's DD2?

8 UNIDENTIFIED SPEAKER: DD3.

9 MR. BINI: DD3, okay. And DD2 relates to
10 domestic persons and so the defendant would qualify under
11 both of those -- and his co-conspirators, some of them,
12 with respect to the state-owned company would, as well,
13 if that answers your Honor's question.

14 THE COURT: It does. It's quite edifying.
15 Does defense counsel have any dispute with the
16 government's representation of the statute?

17 MR. SCHAFFER: We do not dispute that, your
18 Honor.

19 THE COURT: Okay. It's an application of the
20 statute that doesn't come across my desk with enough
21 frequency for me to be intuitively familiar with it, so I
22 appreciate your bringing it out.

23 MR. BINI: Your Honor, one other thing I would
24 add is just as my colleague said, noted to me, which is I
25 would ask or would state that if the case were to go to

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1 trial, the government would also prove that others were
2 involved in the conspiracy besides the government
3 officials, as the defendant also provided in his
4 allocution with respect to fuel oil companies that were
5 not government officials. So it included both, government
6 officials, the fuel oil companies and certain
7 intermediaries who were conspirators.

8 THE COURT: Is that accurate, Mr. Berkowitz?

9 THE DEFENDANT: Yes, it is.

10 THE COURT: Is the government satisfied with
11 the record?

12 MR. BINI: Yes, your Honor.

13 THE COURT: Is there anything defense counsel
14 wants me to review or add?

15 MR. SCHAFFER: Nothing, your Honor.

16 THE COURT: Based on the information given to
17 me, I find that the defendant Rodrigo Garcia Berkowitz is
18 acting voluntarily, that he fully understands his rights
19 and the consequences of his plea and that his plea has a
20 factual basis. I therefore respectfully recommend that
21 United States District Judge Dearie accept the
22 defendant's plea of guilty to felony information's sole
23 count.

24 I had a Post-It here with a sentencing date
25 that Judge Dearie was proposing and that is September

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1 13th, at 10 a.m.

2 Mr. Berkowitz, between now and when you are
3 sentenced, you will be interviewed by a probation
4 officer. The reason for the interview will be to help
5 the officer prepare that report I was telling you about
6 earlier that Judge Dearie will rely upon when he decides
7 what your sentence should be. It's therefore quite
8 important that you be cooperative and candid during that
9 interview.

10 Do you understand what I have said?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Great. I think we have two more
13 things to address, one being the question of pretrial
14 release and one being a reminder to the defendant that he
15 needs to be processed by the marshal before he is at
16 liberty to leave. And then --

17 MR. BINI: Yes, your Honor. With respect to
18 bail conditions or release conditions, if applicable
19 here, I've spoken to defense counsel and the parties
20 would ask for a \$500,000 signature bond signed by the
21 defendant, with the defendant's travel restricted to the
22 Eastern District of New York, the Southern District of
23 New York, Washington, D.C. --

24 THE COURT: Hang on. Hang on.

25 MR. BINI: Oh, I'm sorry.

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1 THE COURT: EDNY, SDNY --

2 MR. BINI: Washington, D.C.

3 THE COURT: -- D.C. --

4 MR. BINI: And the State of Texas.

5 THE COURT: -- and Texas and travel in between

6 I take it.

7 MR. BINI: Yes, your Honor.

8 THE COURT: Are there any other conditions?

9 MR. BINI: The surrender of any travel
10 documents --

11 THE COURT: To pretrial?

12 MR. BINI: Yes, your Honor.

13 THE COURT: How long will it take you to do
14 that, Mr. Schaffer?

15 MR. SCHAFFER: We have them now, your Honor.
16 We're going to tender right after court.

17 THE COURT: Okay, so I am going to put by
18 today.

19 Are you seeking reporting requirements?

20 MR. BINI: We would not at this time, your
21 Honor.

22 THE COURT: So there are no other conditions,
23 other than the travel and the surrender of the passports?

24 MR. BINI: Yes, your Honor.

25 THE COURT: Would it be more convenient if the

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1 surrender was at the pretrial offices?

2 PRETRIAL SERVICES OFFICER: We'll meet with the
3 defendant after court today, your Honor. We would ask,
4 if possible, for random home visits, if --

5 MR. BINI: No objection.

6 PRETRIAL SERVICES OFFICER: And report as
7 directed, if we need him to come into the office, just so
8 we have the authority to do that on pretrial and --

9 THE COURT: Where is he going to be living?

10 MR. SCHAFFER: In Houston.

11 THE DEFENDANT: Houston.

12 THE COURT: In Houston, Texas? So you would
13 have to get a courtesy visit, I suppose.

14 PRETRIAL SERVICES OFFICER: Correct.

15 THE COURT: Do you wish to be heard in
16 opposition?

17 MR. BINI: No, we're fine with that, your
18 Honor.

19 THE COURT: All right. You'll report as
20 directed and random visits at home and work. If you feel
21 it's -- you need more, you can apply obviously through
22 the United States Attorney's Office or directly and if
23 you feel it's too much, you can tell me so and we'll
24 reconsider.

25 THE DEFENDANT: Thank you.

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1 THE COURT: All right. Anything else?

2 MR. BINI: Not from the government, your Honor.

3 THE COURT: All right. Mr. Berkowitz, at the
4 government's urging, and despite the gravity of the
5 offense and your ties to a foreign country -- well,
6 actually there is one question I did want to ask.
7 According to the pretrial report, the defendant's status
8 in the United States is now somewhat ambiguous.

9 More specifically, I believe he came here on a
10 visa that has expired. Can the government tell me
11 anything about what the status of its efforts to allow
12 him to continue to remain here unlawfully are and whether
13 he'll be able to get any work while he is here, et
14 cetera?

15 MR. BINI: The FBI has submitted a deferred
16 action request and they're working in order to do that
17 for -- so that -- to hopefully resolve those issues.

18 With respect to work, that I can't say other
19 than I noted that he's has been working as an Uber driver
20 in the pretrial services report. Certainly, that's very
21 important.

22 THE COURT: Well, I certainly don't want you
23 to, on the one hand, be a party to this release order and
24 on the other hand, contend that his work as an Uber
25 driver is the work of an undocumented individual that's

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1 illegal and he should be charged with violating the terms
2 of his bail conditions.

3 MR. BINI: No.

4 THE COURT: You know, we have to have a clear
5 understanding of what will constitute a violation of
6 these conditions or not and if your position is that with
7 an expired visa, he shouldn't be working, I'll hear that
8 argument. I just don't want him whipsawed by any
9 ambiguity here.

10 MR. BINI: I understand your Honor's point and
11 certainly the reason why the FBI has submitted that
12 deferred action request in this case is because we're
13 hoping to work with the defendant and for that reason, we
14 also agree with your Honor that we would not be seeking
15 to take adverse action against him based upon his
16 immigration status because we would want to be able to
17 cooperate with him.

18 THE COURT: All right. Mr. Berkowitz, at the
19 government's urging, I am going to release you on this
20 \$500,000 bond. I want you to understand that your travel
21 will be restricted as we just dictated. Pretrial
22 services officers may come to your home. You need to
23 make them feel as comfortable as you can there and if
24 they tell you to report, you need to report. It's not a
25 get out of jail free card by any means.

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1 If you don't come back to court and follow
2 these rules, you'll owe the United States government
3 \$500,000. By the way, while you're out on bail, you may
4 not commit any new crimes. If you commit a new crime
5 while you're out on bail, it's grounds to revoke your
6 bail and impose a harsher penalty for the new offense
7 because you were on bail when it was committed.

8 If you don't follow the rules, you'll not only
9 owe the United States government \$500,000, but a warrant
10 will issue for your arrest for failing to appear. They
11 will find you and bring you back here and I anticipate
12 that you won't be released on bond a second time.

13 You could also be charged with the separate
14 crime of bail jumping. All the prosecution has to prove
15 to establish bail jumping is that you were ordered to be
16 here, and you're not. Once they prove that, you'll be
17 convicted of bail jumping and any bail jumping conviction
18 requires a prison sentence that is consecutive to, not
19 concurrent with whatever sentence you receive on the
20 charge to which you just pled guilty.

21 Is all of that clear?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: There's a line for the defendant to
24 sign. I put a little X there for him to sign the bond.

25 I'm going to ask the government to stay behind

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1 to help me sift through all this paperwork which I've
2 discombobulated in the course of this proceeding.

3 MR. BINI: Thank you, your Honor.

4 THE COURT: Thank you.

5 (Pause)

6 THE COURT: All right. The bond appears to be
7 in order. I think I am done with the exception of
8 directing the defendant to proceed to the marshal's
9 service and to pretrial to surrender the passports at
10 pretrial and provide any pedigree information necessary
11 and then the marshal's for fingerprinting and processing.

12 I am going to allow -- I am going to take the
13 court copy off. I have a copy of the bond for defense
14 counsel. Will the marshals need the original? No, they
15 would need the detention order, not the bond.

16 MR. BINI: No, I think as long as they have a
17 copy that's sufficient, your Honor.

18 THE COURT: Okay. And I have pretrial's here.

19 MR. BINI: Your Honor, the government would
20 also request sealing of the transcript of the proceedings
21 today for the same reasons set out in the government's
22 letter of February 7, 2019, with a copy available without
23 further order of the Court to both defense counsel and
24 the government.

25 THE COURT: Any objection?

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1 MR. SCHAFFER: None, your Honor.

2 THE COURT: Sealing is so order.

3 MR. BINI: Thank you, your Honor.

4 THE COURT: In addition, the prosecution may
5 distribute any minutes pursuant to Brady and its progeny
6 and 3500 of Title 18 without further application to the
7 Court but with the courtesy of giving counsel for Mr.
8 Berkowitz advance notice that that is going to happen.
9 All right?

10 MR. BINI: Thank you, your Honor.

11 MR. KENNEDY: Your Honor, and if I may, kind of
12 on that note, when we file documents, like applications
13 to appear pro hac or a notice of appearance, it has all
14 been John Doe. The information and cooperation agreement
15 sealed.

16 Like I noticed today, the waiver of indictment
17 had his name but didn't say sealed on it, as opposed to a
18 John Doe. And the Court had inquired whether or not this
19 was a John Doe docket, meaning I guess anything and
20 everything filed is automatically sealed or if we have to
21 specifically ask for it or if everything should be titled
22 as a United States v. John Doe and like the waiver of
23 indictment, it clearly states the name. I had a little
24 bit of confusion about that.

25 THE COURT: So do I, actually but if that's an

Proceedings

1 application that the waiver of indictment form be filed
2 under seal, I will grant it.

3 MR. KENNEDY: Fair enough.

4 MR. BINI: Yes, your Honor, I would join that.
5 I thought it went in with the information itself.

6 THE COURT: Yeah. It's in a -- oh, I see, the
7 envelop you gave me was --

8 MR. BINI: I think so.

9 THE COURT: -- for the waiver and the
10 information.

11 MR. BINI: I think so because you can't have
12 the information without the waiver.

13 THE COURT: Right. Okay. So why don't we, if
14 we're finished with the record, we'll go off and we'll
15 figure out the paperwork now. Okay?

16 MR. BINI: Thank you, your Honor.

17 THE COURT: Okay.

18 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 14th day of February, 2019.


Linda Ferrara

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